

Serial No. 09/928,585 - Rojas et al.

REMARKS

Claims 1-5, 9-15, and 18-29 are of record in this application. Claims 1-5, 9, 12, 18, 21, 23, and 25 have been amended, claims 6-8, 16, and 17 have been canceled, and new claims 28 and 29 have been added.

Applicants kindly thank the Examiner for indicating that claims 25-27 are allowable, that claims 17-19 would be allowable if rewritten in independent form, and that claims limited to gossypol plus a fungal insecticide plus feeding stimulant would be allowable. Applicants further thank the Examiner for suggesting claim language to overcome the rejections under 35 U.S. 112. Applicants have presented this amendment in an effort to incorporate only those limitations indicated as being allowable and the Examiner's suggested claim terminology (claim 27 has also been amended to correct the reference to the target pest).

Applicants reserve the right to right to file one or more Divisional and/or Continuation applications drawn to the canceled subject matter.

Serial No. 09/928,585 - Rojas et al.

Support for the amendments to the claims is inherent in the originally filed disclosure. Specifically, claim 1 has been limited to gossypol (lines 1-2 of paragraph 0037 in the specification) and fungal insecticides (paragraph 0069). Claim 12 has been limited to incorporate the limitations of claims 16 and 17 therein. New claim 28 corresponds to original claims 12 plus 16 and 18, while new claim 29 corresponds to original claims 12 plus 20 and 22.

Rejection Under 35 U.S.C. 112

Claims 21 and 23 have been rejected under 35 U.S.C. 112, second paragraph as indefinite. The claims have been amended as suggested by the Examiner.

Rejection under 35 U.S.C. 102

Claims 12-15 and 24 have been rejected under 35 U.S.C. 102(b) as being anticipated by Chemical Abstract 102:201189. The Examiner has taken the position that the concentration of gossypol is inherently within the claimed range and thus the material reported in the abstract is encompassed by the claims. Applicants respectfully disagree.

Serial No. 09/928,585 - Rojas et al.

Chemical Abstract 102:201189 discloses that gossypol was isolated from the wood and bark of *Montezuma speciosissima*. The abstract reported that the yield was 0.02%.

The instant application is drawn to compositions and their use which include gossypol and/or other phyllophage toxins from glanded cotton in low concentrations which, in the absence of other insecticidal agents, are not biocidal to the target insects. Applicants have unexpectedly discovered that at these low levels, gossypol and other cotton phyllophage toxins slowly weaken the target insects when ingested, thereby rendering them susceptible to a variety of other insecticidal agents at significantly lower levels than normally required for toxicity, and may even render the target insects susceptible to insecticidal agents which are normally ineffective. Moreover, at these low levels, the gossypol and other cotton phyllophage toxins may synergistically enhance the insecticidal efficacy of these other insecticidal agents. As disclosed in the specification at paragraph 0048, in the preferred embodiment the concentration of gossypol is between 5 and 500 ppm. This is not disclosed or suggested by the abstract.

Serial No. 09/928,585 - Rojas et al.

Although the abstract mentions a yield of 0.02%, neither the basis nor the units are provided. It is not disclosed if the yield is the % of gossypol in the extract or in the original wood/bark sample (or if a wood/bark sample of the material is fresh or dried). Further, it is not disclosed if the percentage is on a weight basis (i.e., the weight of gossypol per weight of wood and bark), a weight per volume basis, or some other basis. In the absence of a complete disclosure of how the gossypol is measured, Applicants respectfully submit that the actual concentration in the original sample is a matter of conjecture. However, in an effort to expedite prosecution the claims have been amended as suggested by the Examiner.

Serial No. 09/928,585 - Rojas et al.

Rejection under 35 U.S.C. 102

Claims 1-16 and 20 have been rejected under 35 U.S.C. 102(b) as being anticipated by WPIDS abstract 1992-406126. As in the first rejection, the Examiner has taken the position that the concentration of gossypol is inherently within the claimed range and thus the material reported in the abstract is encompassed by the claims. Applicants respectfully disagree.

WPIDS abstract 1992-406126 discloses a chemical treatment for processing cotton waste (such as cotton seeds) into animal feed. The processed material is disclosed to contain 6-8% cellulose, 0.01% free gossypol, 0.08% bound gossypol, and up to 0.63 mg/kg chloroorganic pesticides.

The instant application was described *supra*.

As in the previous rejection, this abstract does not disclose if the percentage is on a weight basis (*i.e.*, the weight of gossypol per weight of feed product), a weight per volume basis, or some other basis. Without this information the actual gossypol concentration cannot be accurately determined. Moreover, the chloroorganic pesticides are not identified. It cannot be determined if the disclosed and claimed insecticidal

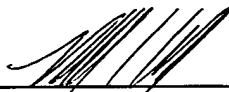
Serial No. 09/928,585 - Rojas et al.

agents are anticipated or, with respect to claim 2, if the chloroorganic pesticides are present in an amount which would be ineffective for control of the disclosed insects (or if the composition is effective against the pests of claim 11).

However, despite these shortcomings, applicants have nonetheless amended the claims in an effort to expedite prosecution.

For the reasons stated above, claims 1-5, 9-15, and 18-29 are believed to satisfy the requirements of 35 U.S.C. 112 and distinguish over the prior art of record. Allowance thereof is respectfully requested.

Respectfully submitted,



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